

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SCOTT F. LACEY,

Plaintiff,

v.

Civil Case No. 16-14363
Honorable Linda V. Parker

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

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**OPINION AND ORDER (1) ADOPTING MAGISTRATE JUDGE'S
FEBRUARY 15, 2018 REPORT AND RECOMMENDATION; (2)
GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT; (3) DENYING DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT; AND (4) REMANDING MATTER TO THE
COMMISSIONER OF SOCIAL SECURITY**

Plaintiff applied for Disability and Disability Insurance Benefits under the Social Security Act on April 24, 2014, alleging that he became disabled on April 29, 2013. The Social Security Administration denied Plaintiff's application for benefits initially. Upon Plaintiff's request, Administrative Law Judge Ena Weathers ("ALJ") conducted a de novo hearing on October 20, 2015. The ALJ found Plaintiff not disabled in a decision issued December 3, 2015. The ALJ's decision became the final decision of the Social Security Commissioner ("Commissioner") when the Social Security Appeals Council denied review.

On December 15, 2016, Plaintiff initiated the pending action challenging the Commissioner's decision. The matter was referred to Magistrate Judge Stephanie Dawkins Davis on the same date "for determination of all non-dispositive motions pursuant to 28 U.S.C. § 636(b)(1)(A) and issuance of a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and (C)." (ECF No. 3.) The parties subsequently filed cross motions for summary judgment. (ECF Nos. 16, 20.)

On February 15, 2018, Magistrate Judge Davis issued a Report and Recommendation (R&R) in which she recommends that this Court grant in part and deny in part Plaintiff's motion for summary judgment, deny the Commissioner's motion, and remand the matter to the Commissioner for further proceedings under sentence four of 42 U.S.C. § 405(g). (ECF No. 22.) Magistrate Judge Davis concludes that a remand is necessary because the ALJ's decision does not reflect consideration of the opinion of Plaintiff's treating physician, Steven T. Plomaritis, D.O., that Plaintiff has a 60 degree abduction restriction. (*Id.* at Pg ID 460-61.) Magistrate Davis finds that the ALJ's omission does not constitute harmless error because the questions posed to the vocational expert did not encompass this restriction and it is unclear whether the restriction enabled Plaintiff to perform the jobs listed by the vocational expert. (*Id.* at Pg ID 464-65.) Magistrate Judge Davis rejects, however, Plaintiff's argument that the ALJ failed

to include his 20 pound lifting restriction in the residual functional capacity assessment and his challenge to the vocational expert's qualifications and testimony. (*Id.* at 458-59, 471-73.)

At the conclusion of the R&R, Magistrate Judge Davis advises the parties that they may object to and seek review of the R&R within fourteen days of service upon them. (*Id.* at Pg ID 473-74.) Neither Plaintiff nor Defendant filed objections to the R&R.

The Court carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Davis. The Court therefore adopts her February 15, 2018 R&R.

Accordingly,

IT IS ORDERED that Plaintiff's motion for summary judgment (ECF No. 16) is **GRANTED IN PART AND DENIED IN PART**;

IT IS FURTHER ORDERED, that the Commissioner's motion for summary judgment (ECF No. 20) is **DENIED**;

IT IS FURTHER ORDERED, that the Commissioner's decision denying Plaintiff's social security benefits is **REVERSED** and this matter is **REMANDED** pursuant to sentence four of 42 U.S.C. § 405(g) for further proceedings consistent

with this Opinion and Magistrate Judge Davis' February 15, 2018 R&R.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: March 7, 2018

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, March 7, 2018, by electronic and/or U.S. First Class mail.

s/ R. Loury
Case Manager